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1. BACKGROUND.

- a. NEPA establishes a broad national policy to promote efforts to improve the relationship between human activity and the environment. NEPA's policy is to fully disclose and consider environmental information in Federal agency decisionmaking, and to include the public in the decisionmaking process.
- b. The CEQ regulations for implementing NEPA apply uniformly to and are binding upon all Federal agencies, and direct each agency to adopt implementing procedures which relate the CEQ regulations to the specific needs of that agency's programs and operating procedures.
- c. This Order implements the mandate of NEPA, as defined and elaborated upon by the CEQ regulations, within the programs of the Department of Transportation (DOT, or the Department). The Order is not a substitute for the CEQ regulations, but supplements the CEQ regulations by applying them to DOT programs. Therefore, all operating administrations and Secretarial offices shall comply with both the CEQ regulations and the provisions of this Order.
- d. This Order provides instructions for implementing NEPA and other applicable environmental laws, regulations and executive orders. The environmental impact analysis process established by this Order implements the Department's policy objective of consolidated and streamlined environmental processing. To the maximum extent possible, a single process should be used to meet requirements for environmental analyses, consultations and reviews.
- e. This Order also encourages a strong emphasis on intermodal collaboration in meeting environmental responsibilities.

2. ENVIRONMENTAL POLICY AND INTENT.

- a. It is the policy of the DOT to integrate national environmental objectives into the missions and programs of the Department and to:
 - (1) Avoid or minimize adverse environmental effects wherever practicable;
 - (2) Restore or enhance environmental quality to the fullest extent practicable;
 - (3) Preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites;

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- (4) Preserve, restore and improve wetlands;
 - (5) Use a systematic, interdisciplinary approach in transportation planning and decisionmaking that may have an impact on the environment;
 - (6) Increase access to transportation services and facilities and opportunities for minority communities, low income communities, and people with disabilities, and promote the principles of environmental justice as embodied in EO 12898 through the incorporation of those principles in all DOT programs, policies and activities;
 - (7) Support decisionmaking which promotes livability -- integrating land use planning, transportation, economic growth strategies, social equity, and environmental priorities;
 - (8) Encourage Tribal governments, States and communities to use their transportation plans, resources, and programs to improve safety, reduce congestion growth, contribute to greater economic prosperity, ease access to jobs and provide greater accessibility for all modes in a more environmentally friendly way; and
 - (9) Encourage communities to select from a range of transportation alternatives and choices and to better use existing transportation systems in planning and implementing transportation projects.
 - (10) Integrate the environmental leadership goals of EO 13148 into the NEPA process and planning for DOT activities, including environmental compliance; right-to-know and pollution prevention; reduction in release of toxic chemicals; reduction in the use of pollutants and ozone depleting chemicals; and use of environmentally and economically beneficial landscaping.
- b. The purpose of the environmental procedures in this Order is to provide Department officials, other decision makers, and the public, as part of the decision- making process, with an understanding of the potential effects of proposed actions significantly affecting the quality of the human environment, including the natural and physical environment. The environmental review process is to be used to explore and document alternative actions that will avoid or minimize adverse impacts.
- c. The environmental impact statement (EIS), record of decision (ROD), environmental assessment (EA), finding of no significant impact (FONSI), and determination that a proposed action is categorically excluded, serve as the record of compliance with the

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policies and procedures of NEPA, the CEQ regulations and this Order. To the maximum extent practicable, all applicable environmental studies, reviews and consultations should be coordinated at the earliest possible time into a single process, and compliance with all applicable environmental requirements should be reflected in the EA and FONSI, or the EIS and ROD.

3. PLANNING AND EARLY COORDINATION.

- a. The identification and evaluation of the social and environmental effects of a proposed action, and the identification of the purpose and need and all reasonable measures to mitigate adverse impacts, shall be initiated in the early planning stages of the action, and shall be considered along with technical and economic studies. Consideration of environmental impacts also should be a part of regional transportation system planning and broad transportation program development.
- b. Where the DOT action is initiated by a Tribal, State or local agency, or other public or private applicants, the responsible operating administration shall assure that the applicant is advised of any environmental analysis and review requirements and that any required consultation with appropriate agencies and interested persons is initiated at the earliest possible time. (See paragraph 23.b. of this Order.)
- c. Administration procedures for early consultation and public participation shall incorporate scoping (CEQ 1501.7) for the EIS preparation process. Implementing procedures shall assure that major issues are identified and that all interested persons have an opportunity to participate in the scoping and early consultation processes.
- d. Where the proposed action is initiated by a State and may have major impacts on a Federal land management entity or any other State, the responsible Federal official shall provide early notice to and solicit the views of that Federal land management entity or other State.
- e. For intermodal projects requiring environmental planning and compliance, the applicable operating administrations will agree among themselves upon a lead organization, if one has not been designated by law. See Section 12 of this Order. The environmental regulations and procedures of the lead organization that are applicable to the intermodal project will govern the associated environmental planning and compliance processes.
- f. In unique instances when the NEPA procedures of one operating administration may be more useful to the activities of a lead operating administration, those procedures may be used by the lead organization to facilitate and streamline the environmental impact analysis process. These procedures, including use of approved categorical exclusions, may be

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applied only to a particular project after prior consultation between operating administrations and formal agreement in a memorandum of understanding.

- g. The requirements of this Order apply to, but are not limited to, the following: grants, loans, loan guarantees, construction, research activities, rulemaking and regulatory actions, certifications, licenses, permits, approval of policies and plans (including those submitted to DOT by Tribal, State or local agencies, or other public or private applicants), adoption or implementation of programs, legislation proposed by DOT, and any waivers, denials, amendments, renewals or re-approvals of the foregoing (CEQ 1508.18(b)).

4. CATEGORICAL EXCLUSIONS.

- a. Agency Responsibility. Although a proposed action may qualify for a categorical exclusion from the requirement to prepare an EA or EIS under paragraph 4c, this exclusion does not relieve the agency from responsibility for compliance with other applicable environmental requirements. This includes the requirement for Federal, State and local permits, State regulatory agency review of plans, and other local procedures.
- b. Extraordinary Circumstances. Some actions that would normally be categorically excluded under individual operating administration procedures or this Order could require additional environmental analysis. A determination of whether an action that is normally categorically excluded requires additional analysis depends on whether the proposed action involves extraordinary circumstances with significant adverse environmental impacts or potentially significant impacts. An EA or EIS, as applicable, shall be prepared when a proposed action is likely to, or will have, significant impacts involving any of the following circumstances:
 - (1) Public health or safety.
 - (2) A site that includes or is near a unique characteristic of the geographic area, such as a historic or cultural resource, park land, prime farmland, wetland, wild and scenic river, ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c). (Section 303(c) of Title 49 U.S.C. is commonly referred to as section 4(f) of the DOT Act which includes any land from a public park, recreation area, wildlife and waterfowl refuge, or historic site.)
 - (3) The quality of the human environment that is likely to be highly controversial in terms of scientific validity or public opinion.
 - (4) The human environment that is highly uncertain or involves unique or unknown risks.

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- (5) Future precedent setting actions with significant effects or a decision in principle about a future consideration.
- (6) An individually insignificant, but cumulatively significant, impact when considered along with other past, present, and reasonably foreseeable future actions.
- (7) A district, site, highway, structure, or object that is listed in or eligible for listing in the National Register of Historic Places, or the loss or destruction of a significant scientific, cultural, or historical resource.
- (8) Species or habitats protected by the Endangered Species Act.
- (9) A potential or threatened violation of a Federal, State, or local law or requirement imposed for the protection of the environment.
- (10) An impact that may be both beneficial and adverse. A significant impact may exist even if it is believed that, on balance, the effect will be beneficial.

The simple existence of any of the situations as described in 4.b.(1) –(10) above in connection with a proposed action is not necessarily a reason to prepare an EA or EIS. The determination that a CE is inappropriate and that either an EA or EIS is needed, shall be based on the potential significance of the proposed action's effects on the environment. The proposed action must be evaluated in its context (whether local, regional, State, tribal, national, or international) and in its intensity by considering the level of possible effects from the circumstances listed in 4.b.(1)-(10).

- c. List of Categorical Exclusions. The following actions are Federal actions that do not individually or cumulatively have a significant effect on the human environment based on past experience with similar actions, and therefore do not normally require either an EA or an EIS:

- (1) Administrative procurements (e.g., general supplies) and contracts for personal services;
- (2) Personnel actions (e.g., promotions, hirings);
- (3) Project amendments (e.g., increases in costs) which do not change the scope or timing of the action;
- (4) Operating or maintenance subsidies when the subsidy will not result in a change in the scope or timing of the action;

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- (5) Other actions formally identified by the operating administrations as categorical exclusions in their NEPA implementation instructions, orders, or regulations pursuant to Section 23 of this Order; and
- (6) The following actions relating to economic regulation of airlines:
 - (a) Actions implementing the essential air service program;
 - (b) Enforcement proceedings;
 - (c) Actions approving a carrier agreement; acquisition of control, merger, consolidation, or interlocking relationship;
 - (d) Finding a carrier fit under Section 401 of the Federal Aviation Act of 1958, as amended;
 - (e) Approving or setting carrier fares or rates;
 - (f) Route awards involving turboprop aircraft having a capacity of 60 seats or less and a maximum payload capacity of 18,000 pounds or less;
 - (g) Route awards that do not involve supersonic service and will not result in an increase in commercial aircraft operations of one or more percent;
 - (h) Determinations on termination of airline employees;
 - (i) Actions relating to consumer protection, including regulations;
 - (j) Authorizing carriers to serve airports already receiving the type of service authorized and resulting in minimal air quality, noise or other adverse environmental consequences;
 - (k) Granting temporary or emergency authority;
 - (l) Negotiating bilateral agreements;
 - (m) Registration of an air taxi operator pursuant to the Department's Regulations (14 CFR Part 298); and
 - (n) Granting of charter authority to a U.S. or foreign air carrier under Sections 401, 402 or 416 of the Federal Aviation Act or the Department's Economic Regulations.

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5. ENVIRONMENTAL ASSESSMENT (EA). An EA is a document that provides sufficient analysis to determine whether to prepare a FONSI or an EIS (CEQ 1508.9).
 - a. An EA shall be prepared when:
 - (1) A proposed action is not covered by a categorical exclusion and does not require an EIS;
 - (2) Necessary under the NEPA procedures adopted by DOT modes;
 - (3) An action is normally categorically excluded but is likely to, or will involve, significant impacts on or from, as applicable, circumstances as set forth in paragraph 4.b.
 - b. The EA should be as concise as possible while matching the magnitude of the proposed action. The EA briefly describes the purpose and need for the proposal, the affected environment, the potential environmental impacts of the proposed action and alternatives, including the “no action” alternative, and a listing of agencies and persons consulted during EA preparation. The format of an EA may be the same as that of an EIS, to facilitate rapidly transforming the document to an EIS if a significant impact is found.
4. FINDING OF NO SIGNIFICANT IMPACT (FONSI).
 - a. The FONSI describes why a proposed action analyzed in an EA will not have a significant effect on the environment and thus will not be the subject of an EIS (CEQ 1508.13). The FONSI must summarize the EA, or have it attached and incorporated by reference. It will also note any other environmental documents related to the proposed action.
 - b. Operating administrations shall involve environmental agencies, applicants and the public to the extent practicable in the preparation of the EA and make the EA and FONSI available to the public as specified in CEQ 1506.6. In all cases, notice shall be provided to the appropriate State clearinghouse(s) or, if a State has no clearinghouse, the notice shall be sent to the appropriate State(s) and affected local government official(s).
 - c. In the circumstances defined in CEQ 1501.4(e)2, a copy of the EA shall be made available to the public for a period of not less than 30 days before the FONSI is approved and the action is implemented. Consultation with other Federal agencies concerning Section 4(f) of the DOT Act (see Section 13 and the Attachment to this Order), the Historic Preservation Act, Section 404 of the Clean Water Act and other Federal requirements must be accomplished as applicable to the proposed action.

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7. ENVIRONMENTAL IMPACT STATEMENT (EIS). An EIS shall be prepared for any proposed major Federal action significantly affecting the environment (CEQ 1508.27).
- a. Scope of Draft EIS (DEIS). The action covered by the DEIS must be broad enough in scope to avoid segmentation of projects and to ensure meaningful consideration of alternatives. The breadth of the statement should be decided upon during the scoping process. (See also CEQ 1501.7 and 1502.20 and paragraph 7.g. of this Order.) Similar actions, which have a common basis for analysis, such as timing or geography, may be covered in a single EIS.
 - b. Scoping. The scoping process is iterative and proactive, involving communication with individual members of the public, neighborhood, community, and local leaders, public interest groups, congressional delegations, State, Tribal, and local governments, and Federal agencies. The purpose of this process is to de-emphasize minor considerations and focus the scope of the environmental analysis on the major issues (CEQ 1508.25).
 - c. Timing of Preparation of the DEIS. The DEIS shall be prepared at the earliest practicable time prior to the first major point of decision in the program or project development process. The DEIS should be prepared early enough in the process so that the analysis of the environmental effects and the exploration of alternatives can be meaningfully considered in the decisionmaking process. The implementing guidance of operating administrations (see Section 23) shall specify the point at which draft statements should be prepared for each type of action.
 - d. Interdisciplinary Approach and Responsibilities for EIS Preparation. An interdisciplinary approach should be used throughout planning and preparation of environmental documents to help assure a systematic evaluation of reasonable alternative courses of action and their potential social, economic, and environmental consequences. Use of professional services from other Federal, Tribal, State or local agencies, universities, consulting firms or other experts is acceptable in carrying out such an interdisciplinary approach. However, operating administrations shall have staff capabilities adequate to evaluate what others do for DOT so that DOT can confidently take responsibility for the final content of environmental documents. Secretarial offices may request assistance from the Office of Transportation Policy Development (P-130).
 - e. Preparation of the DEIS. If practical, DEISs shall be prepared concurrently with and integrated with environmental analyses required by other environmental review laws and executive orders. The EIS process should be used to coordinate all studies, reviews and consultations (CEQ 1502.25). The DEIS should reflect the results of the scoping and early consultation processes. A general class of actions may be covered in a single EIS when the environmental impacts of all the actions are similar.

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- f. Format and Content. The format and content of the DEIS shall be consistent with CEQ 1502.10 and have a cover sheet and summary in accordance with CEQ 1502.11 and 1502.12 (also see the Attachment to this Order).
 - g. Tiering and Programmatic EISs. Tiering of environmental impact statements as discussed in CEQ 1502.20 is encouraged when it will improve or simplify the environmental processing of proposed DOT actions. Preparation of tiered EISs should be considered for complex transportation proposals (e.g. major urban transportation investments, airport layout plans, aids to navigation systems, etc.) or for a number of discrete but closely related Federal actions. A programmatic EIS may be the first tier of environmental analysis, focusing on broad issues such as a program decision, mode choice, general location and area-wide air quality, and land use implications of proposed alternative transportation improvements. System planning activities should encompass environmental studies, as noted in paragraph 3.a., and the programmatic EIS should use information from these system planning studies and appropriate corridor planning and other planning studies. Subsequent to a programmatic EIS, a second tier, site-specific environmental document should incorporate the programmatic EIS by reference and focus on more detailed project impacts and detailed mitigation measures (e.g., addressing detailed transit station locations, highway interchange configurations, etc.).
8. INVITING COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT.
- The DEIS shall be circulated with an invitation to comment to (1) all cooperating agencies and other agencies having jurisdiction by law or special expertise with respect to the environmental impacts involved; (2) interested persons; (3) U.S. Environmental Protection Agency (EPA) Office of Federal Activities; (4) Indian Tribes, and (5) other operating administrations of DOT, where appropriate. A reasonable number of copies shall be provided to permitting agencies and interested persons.
- a. Filing with the EPA. Copies of the DEIS shall be filed with the EPA. (See CEQ 1506.9 and 1506.10.)
 - b. Tribal, State and Local Review.
 - (1) Review of the proposed action by Tribal, State and local agencies, when appropriate, shall be obtained as follows:
 - (a) Copies of the draft and final environmental impact statements shall be sent to Tribal government representatives, appropriate State clearinghouse(s) or, if there is no clearinghouse, the appropriate State(s)

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and affected local government official(s), and to the applicant whose project is the subject of the EIS.

- (b) Project applicants or administrations shall obtain comments from appropriate metropolitan planning organizations, airport authorities, and transit operators.
 - (2) At the time a draft or final EIS is filed with EPA, the availability of the statement should be announced through advertisements in local newspapers and other effective methods, such as notices on public library bulletin boards. Copies of EISs shall be provided to the public upon request and made available at appropriate public places, such as public libraries.
- c. Review of EISs Prepared Pursuant to Section 102(2)(D) of NEPA. If the DEIS is prepared by a State agency with statewide jurisdiction, and the proposed action will affect another State or Federal land management entity, the DEIS shall be circulated to the affected State or Federal land management entity.

9. FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS).

- a. Preparation. The FEIS shall identify the preferred alternative, including measures to mitigate adverse impacts. In identifying the preferred alternative, the operating administration should consider the policies stated in Section 2, Environmental Policy and Intent. Every effort should be made to resolve major issues raised through circulation of the DEIS, the community involvement process and consultation with cooperating agencies before the EIS is put into final form for approval by the responsible official. The FEIS shall reflect such issues, consultation and efforts to resolve the issues, including an explanation of why any remaining issues have not been resolved.
- b. Compliance with Other Requirements. The FEIS should reflect that there has been compliance with the requirements of all applicable environmental laws and orders, e.g., Section 4(f) of the DOT Act (see Section 13 and the Attachment to this Order), Section 106 of the National Historic Preservation Act, Section 404 of the Clean Water Act, Section 7 of the Endangered Species Act, the essential fish habitat requirements of the Magnuson-Stevens Act, EO 11998 and the DOT Floodplain Management Order (5650.2), EO 11990 and the DOT Wetlands Order (5660.1A), and Title VI of the Civil Rights Act of 1964 and the DOT Environmental Justice Order (5610.2). If such compliance is not possible by the time of FEIS preparation, the EIS should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements can be met.

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- c. Legal Review. All FEISs shall be reviewed for legal sufficiency by the chief counsel of the operating administration concerned, or by a designee. FEISs prepared within the Office of the Secretary (OST) shall be reviewed for legal sufficiency by the OST General Counsel (C-1).
- d. Approval. FEISs may be approved by the operating administration administrator or Secretarial officer (or a designee) initiating the action. For highly controversial FEISs that require approval or concurrence by the headquarters of the operating administration pursuant to administration procedures for approval, the Assistant Secretary for Transportation Policy (P-1) and C-1 shall be notified that the FEIS is under review and will be provided a copy of the summary section contained in the FEIS. P-1 and C-1 will also be given at least two weeks notice before approval of the FEIS. For purposes of this paragraph, a proposed Federal action is considered highly controversial when the action is opposed on environmental grounds by a Federal, Tribal, State, or local government agency or by a substantial number of the persons affected by the proposed action.
- e. Availability Pending Approval. If there is an initial level of approval by the operating administration, proposed FEISs that are initially approved should normally be made available for inspection during usual business hours by the public and Federal, Tribal, State or local agencies. These FEISs should carry a notation that the FEIS is not approved and filed.
- f. Availability of FEISs. After approval, the originating office shall transmit copies of the FEIS to EPA in accordance with EPA instructions. The originating office shall send copies of the FEIS to the applicant, if appropriate, all Federal, Tribal, State, and local agencies and private organizations that commented substantively on the DEIS or requested copies of the FEIS, and to individuals who requested copies.

10. RECORD OF DECISION (ROD).

- a. A ROD (CEQ 1505.2) is a concise public document stating what the agency's decision is on a specific action. The ROD should explain the conclusions, the reasons for the selection, and the alternatives considered in the FEIS. The ROD should summarize all the major factors the agency weighed in making its decision, including essential considerations of national policy. A decision on a course of action may not be made until the later of the following dates:
 - (1) 90 days after publication of the notice of availability of the DEIS; or
 - (2) 30 days after the publication of the Notice of Availability of the FEIS in the Federal Register. (See CEQ 1506.9 and 1506.10.)

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- b. For intermodal actions, a single ROD may be jointly developed by participating operating administrations, or the administrations may agree to prepare separate RODs for their respective actions.
- c. The ROD must identify the course of action, whether it is the proposed action identified in the FEIS or an alternative, and the environmentally preferable alternative. The ROD must state whether the selected alternative employs all practicable means to avoid, minimize, or mitigate environmental impacts and, if not, explain why.
- d. The operating administrations shall assure, through funding agreements and project review procedures, such as licenses, permits, and other approvals, that mitigation measures designed to minimize adverse environmental effects committed to in the approved FEIS and ROD are implemented (CEQ 1505.2(c) and 1505.3). Any significant deviation from mitigation measures that may reduce protection to the environment must be submitted for concurrence in accordance with operating administration procedures.

11. SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT.

- a. The responsible official shall supplement a DEIS when either:
 - (1) It is determined that there are substantial changes in the proposed action that are relevant to environmental concerns or alternatives available that are relevant to environmental concerns; or
 - (2) When environmental conditions or data relevant to environmental concerns change substantially from those presented in the EIS.
- b. An FEIS shall be supplemented when conditions or data relevant to environmental concerns change substantially from that presented in the statement, or if the responsible official determines that a supplement is necessary for some other reason. (The development of additional data as a proposal moves through the implementation process would not require a supplement if the data do not materially conflict with the data in the EIS.)
- c. A supplemental EIS may be prepared to address detailed information which was not available at the time an EIS was prepared and approved, for example, site or project specific impacts which have been discussed only in general terms in a corridor or programmatic EIS. (See also CEQ 1502.20 and paragraph 7.g. of this Order.)
- d. A supplemental EIS should be prepared, circulated and approved in accordance with the provisions of the CEQ regulations and Sections 7 -10 of this Order unless the responsible

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official believes there are compelling reasons to do otherwise. In such cases, the operating administration or Secretarial office should consult with CEQ.

12. LEAD AGENCIES AND COOPERATING AGENCIES.

- a. The operating administration or Secretarial office that has primary Federal responsibility for a proposed action shall serve as the lead agency or joint lead agency for preparing and processing environmental documents. For intermodal projects, generally, the operating administration that has primary responsibility for the project serves as the lead.
- b. An applicant will to the fullest extent practicable serve as a joint lead agency if the applicant is a State or local agency and the proposed action is subject to State requirements comparable to NEPA. (See CEQ 1506.2.) State, Tribal and local governmental agencies that have jurisdiction by law or special expertise should be identified and invited, as appropriate, as cooperating agencies under CEQ 1501.6 and 1508.5.
- c. Coordination with cooperating agencies should be initiated early in the project planning process and continue through all stages of the development of an environmental document.
- d. If an agency that the Department or an operating administration requested to be a cooperating agency replies that it will not participate, the agency shall be provided a copy of the DEIS. If the agency makes adverse comments on the DEIS (including the adequacy of the DEIS or consideration of alternatives or of mitigating measures), or if the agency indicates that it may delay or withhold action on some aspect of the proposal, the Department or the operating administration may discuss the issue with CEQ and request help with resolving the contested issue.
- e. Where an agency asks the Department or an operating administration to be a cooperating agency, the Department or the operating administration shall make every effort to participate.

13. DETERMINATIONS UNDER SECTION 4(f) OF THE DOT ACT.

- a. Any action having a significant adverse environmental impact on lands protected under Section 4(f) of the DOT Act will normally require the preparation of an EIS. In these cases, the EIS shall include the material required by paragraph 4 of the Attachment to this Order. If in the preparation of the final EIS, it is concluded that there is no feasible and prudent alternative to the use of Section 4(f) lands, the final EIS shall support a

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specific determination to that effect, including evidence that there has been all possible planning to minimize harm to the protected lands.

b. Constructive Use and Temporary Occupancy.

(1) "Use" (in paragraph 13.a. of this section) occurs:

- (a) When land is permanently incorporated into a transportation facility;
- (b) When there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes as determined by the criteria in subparagraph b.(5) of this section; or
- (c) When there is a constructive use of land.

(2) Constructive use generally occurs:

- (a) When the transportation project does not incorporate land from a Section 4(f) resource, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features or attributes of the resource are substantially diminished.
- (b) The projected noise level increase attributable to the project substantially interferes with the use and enjoyment of a noise-sensitive facility of a resource protected by Section 4(f), such as hearing the performances at an outdoor amphitheater, sleeping in the sleeping area of a campground, enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, or enjoyment of an urban park where serenity and quiet are significant attributes;
- (c) The proximity of the proposed project substantially impairs esthetic features or attributes of a resource protected by Section 4(f), where such features or attributes are considered important contributing elements to the value of the resource;
- (d) The project results in a restriction on access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site;
- (e) The vibration impact from operation of the project substantially impairs the use of a Section 4(f) resource, such as projected vibration levels

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from a rail transit project that are great enough to affect the structural integrity of a historic building or substantially diminish the utility of the building; or

- (f) The ecological impact of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes.

(3) Constructive use generally does not occur when:

- (a) Compliance with the requirements of section 106 of the National Historic Preservation Act and 36 CFR part 800 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register of Historic Places, results in a determination of "no historic properties present or affected;"
- (b) The projected noise levels of the proposed project do not exceed administration specified criteria;
- (c) The projected noise levels exceed the relevant threshold in subparagraph b.(4)(b) of this section, but the increase in the projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is 3 dBA or less;
- (d) A governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the operating administration approval of a final environmental document, established the location for a proposed transportation project before the designation, establishment, or change in the significance of a Section 4(f) resource;
- (e) There are impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the proposed park, recreation area, or wildlife refuge are concurrently planned or developed.
- (f) Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a resource for protection under Section 4(f);
- (g) Proximity impacts will be mitigated to a condition equivalent to, or better than that which would occur under a no-build scenario;

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- (h) Change in accessibility will not substantially diminish the utilization of the Section 4(f) resource; or
 - (i) Vibration levels from project construction activities are mitigated, through advance planning and monitoring of the activities, to levels that do not cause a substantial impairment of the section 4(f) resource.
 - (5) A temporary occupancy of land is so minimal that it does not constitute a use within the meaning of Section 4(f) when the following conditions are satisfied:
 - (a) Duration is temporary, i.e., less than the time needed for construction of the project, and there is no change in ownership of the land;
 - (b) Scope of the work must be minor (i.e., both the nature and the magnitude of the changes to the Section 4(f) resource are minimal);
 - (c) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purpose of the resource, on either a temporary or permanent basis;
 - (d) The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and
 - (e) There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.
 - d. If an EIS is not required, the material called for in paragraph 4 of the Attachment shall be set forth in an EA, accompanied by a FONSI. If it is determined that the Section 4(f) involvement is minimal and that the action is categorically excluded, the chief counsel, or a designee, of the involved operating administration shall review the Section 4(f) determination for legal sufficiency. The determination document must reflect consultation with the Department of the Interior, and where appropriate, the Departments of Agriculture or Housing and Urban Development.
 - e. The operating administration's general counsel will determine application of Section 4(f) to public interests in lands, such as easements, reversions, etc.
14. REVIEW OF ENVIRONMENTAL IMPACT STATEMENTS PREPARED BY OTHER AGENCIES.

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- a. Other agencies will generally be requested to forward their draft environmental impact statements directly to the appropriate regional offices of the operating administrations. There are several types of proposals, however, that regional offices should refer to administration headquarters for comment. These generally include the following:

- (1) Actions with national policy implications;
- (2) Legislation or regulations having national impacts, or national program proposals.

EISs for the actions listed in subparagraphs 14.a.(1) and 14.a.(2) are to be referred to P-1 for preparation of Departmental comments. In referring these matters to headquarters, the regional office is encouraged to prepare a proposed Departmental response.

- b. Regional offices or other designated field offices of operating administrations should review DEISs for actions which have impact on only one mode or region or which do not fall within paragraph 14.a.
- c. When appropriate, the commenting office should coordinate a response with other departmental offices having special expertise in the subject matter. For example, comments on projects affecting the transportation of hazardous materials or natural gas and liquid products pipelines should be coordinated with the Research and Special Programs Administration, and water resources projects should be coordinated with the U.S. Coast Guard. P-130 will assist in this coordination process, and projects with environmental justice and civil rights implications should be coordinated with the Departmental Office of Civil Rights.

15. PREDECISION REFERRALS TO THE COUNCIL ON ENVIRONMENTAL QUALITY.

The following specific procedures apply to referrals (CEQ 1504) involving operating administrations:

- a. DOT Lead Agency Proposals. An operating administration or Secretarial office receiving a notice of intended referral to CEQ from another agency with respect to a proposed DOT action shall provide P-1 with a copy of the notice. Every effort should be made to resolve the issues raised by the referring agency prior to processing the FEIS. P-1 will be available to assist in any such resolution, and should be notified of the results. These efforts should be documented in the EIS. In the event of an actual referral, the lead agency shall obtain P-1's concurrence in the response to CEQ.
- b. DOT referrals to CEQ on other agencies' proposals:

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- (1) Environmental referrals should be avoided, where possible, through efforts to resolve the issues, after providing notice of intent to refer and prior to the lead agency's filing of the final EIS.
- (2) In the event that the issues have not been resolved prior to filing of the final EIS with EPA, referrals to CEQ will be made by the administrator of the lead operating administration with P-1 concurrence. (See CEQ 1504.3(c) for content of referrals.) Administrations should notify P-1 as soon as it known that a referral will be made. The administrator will deliver a referral to CEQ not later than 25 calendar days after the final EIS is made available to EPA, commenting agencies, and the public.

16. RESPONSIBILITY.

Where an operating administration or Secretarial office serves as lead agency or joint lead agency, it shall be responsible for the scope, objectivity, accuracy and content of EAs and EISs. The EA or EIS shall be prepared by the operating administration or Secretarial office, by a contractor selected by the operating administration or Secretarial office, or by the applicant, pursuant to the provisions of CEQ 1506.2 and 1506.5. In developing implementing instructions, administrations shall note the distinctions made in the CEQ regulations between State agencies with statewide jurisdiction, State and local agencies which must comply with State or local requirements comparable to NEPA, and other applicants.

17. PUBLIC INVOLVEMENT PROCEDURES.

- a. Public involvement in the environmental impact analysis of Departmental actions is essential at each appropriate stage of development of the proposed action and should be sought as early as possible. Public involvement in the environmental process should be integrated with other public involvement procedures to the maximum extent practicable. Attempts should be made to solicit the views of the public through hearings, personal contact, press releases, advertisements or notices in newspapers, including minority-oriented and non-English language media in the area covered by the project, and culturally appropriate and effective communications and outreach, if appropriate, or other methods. See also Section 18 of this Order.
- b. The operating administrations' implementing instructions shall provide that (1) interested persons and Federal, Tribal, State, and local agencies receive early notification of the decision to prepare an EIS, including publication of a notice of intent in the Federal Register, and (2) their comments on the environmental effects of the proposed Federal action are solicited at an early stage in the preparation of the EIS. A summary of public comments and agency responses should be documented in the EA or EIS.

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- c. Project sponsors should develop lists of interested persons at the national, Tribal, State and local levels for proposed actions. These would include individuals and community, environmental, conservation, public service, education, labor, or business organizations, civil rights and environmental justice organizations who are affected by or known to have an interest in the project, or who are knowledgeable about the environmental and health impacts of the proposed action.
- d. Under EO 12372, Intergovernmental Review of Federal Programs, and DOT 4600.4C, Evaluation, Review and Coordination of DOT Assistance Programs and Projects, a grant applicant must notify the appropriate State clearinghouse(s) or, if a State has no clearinghouse, appropriate State(s) or affected local government official(s), of its intention to apply for Federal program assistance. The operating administrations' implementing instructions should provide for the solicitation of comments from the clearinghouse(s) or government official(s) on the environmental consequences of the proposed action.
- e. Hearings.
 - (1) In several instances, a public hearing is required by statute as a condition to Federal approval of a proposed action. Even where not required by statute, an informational hearing or meeting may serve as a useful forum for public involvement.
 - (2) If a public hearing is to be held, the draft EA or EIS (or environmental analysis where the hearing is held by an applicant which is not a joint lead agency) should be made available to the public at least 15 days prior to the hearing.
- f. All meetings and hearings must be physically and programmatically accessible to the public under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, as amended.
- g. Interested persons can get information on the DOT environmental process and on the status of EISs issued by the Office of the Assistant Secretary for Transportation Policy from: The Office of Transportation Policy Development, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, telephone 202/366-4813.
- h. Each operating administration shall indicate in its implementing instructions where interested persons can get information or status reports on EISs and other elements of the NEPA process.

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18. ENVIRONMENTAL JUSTICE.

- a. DOT Order 5610.2, Environmental Justice in Minority Populations and Low-Income Populations, implements Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. EO 12898 requires each Federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”
- b. Operating administrations must, at the earliest stages of transportation project planning, make every effort practicable to notify potentially affected minority populations and low-income populations of proposed agency actions. This may be done through the convening of public meetings and hearings on environmental documents.
- c. Operating administrations must encourage analysis by metropolitan planning offices, State DOTs, local transit boards, state space corporations or agencies, port and airport authorities of the burdens and benefits of transportation facilities and services and how they are distributed. If disproportionately high and adverse impacts are identified during the project planning and environmental impact analysis processes, the agency must ensure these impacts are avoided or mitigated to the greatest degree possible. If these impacts are unavoidable, the agency must explain and justify why mitigation measures cannot be taken.
- d. Operating administrations must abide by the principles of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin by recipients of federal financial assistance, and ensure the compliance of their recipients.

19. PROPOSALS FOR LEGISLATION.

- a. Preparation. An EIS shall be prepared and circulated for any legislative proposal, or for any favorable report on proposed legislation, for which DOT is primarily responsible and which involves significant adverse environmental impacts (CEQ 1506.8). The operating administration or Secretarial office originating the legislation or developing the departmental position on the report shall prepare the EIS.
- b. Processing. The draft EIS shall be cleared with P-1 and submitted by the Assistant General Counsel for Legislation (C-40) to the Office of Management and Budget for circulation in the normal legislative clearance process. The EIS shall be transmitted by the Assistant Secretary for Governmental Affairs, Office of Congressional Affairs (I-10)

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to Congress no later than 30 days after transmittal of the legislative proposal, and must be available in time for congressional hearings. Any comments received on the EIS shall be transmitted by I-10 to Congress. Except as provided by CEQ 1506.8(b)(2), there need not be a final EIS.

20. INTERNATIONAL ACTIONS.

- a. Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, applies to actions having significant environmental impacts primarily outside of the United States and its territories (see EO 12114, Section 2-3(a-d)).
- b. If communication with a foreign government concerning environmental studies or documentation is anticipated, the responsible Federal official shall coordinate such communication with the State Department, through P-1.
- c. If an EIS is required under EO 12114, Section 2-4(a)(i), the EIS will be prepared in compliance with this DOT Order.

21. TIMING OF AGENCY ACTION.

A decision on the proposed action may not be made sooner than the times specified in CEQ 1506.10(b).

- a. Requests for reasonable extensions of the review period for a DEIS should be granted, and when warranted by the magnitude and complexity of the statement or the extent of public interest.
- b. If an operating administration or Secretarial office believes it is necessary to reduce the prescribed time periods for EIS processing, it should request the reduction from the EPA (see CEQ 1506.10(d)). P-130 should be notified of this request.
- c. Where emergency circumstances make it necessary to take an action with significant environmental impacts without observing the provisions of this Order and the CEQ regulations, the operating administration or Secretarial office should consult with CEQ. P-130 should be notified of such consultation.

22. TIME IN EFFECT OF ENVIRONMENTAL IMPACT STATEMENTS.

- a. The DEIS may be assumed valid for a period of three years from the date of approval. If the proposed FEIS is not approved by the approving official within three years from the date of the DEIS circulation, a written reevaluation of the draft by the responsible Federal official may be advisable to determine whether the consideration of alternatives,

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impacts, existing environment and mitigation measures set forth in the DEIS remain applicable, accurate and valid. If there have been changes in these factors relevant to environmental concerns which would be substantial in the consideration of the proposed action, a supplement to the DEIS or a new draft statement shall be prepared and circulated. If no substantial changes have occurred, the lack of a written re-evaluation shall not be considered a procedural flaw.

- b. If major steps toward implementation of the proposed action (such as the start of construction or substantial acquisition and relocation activities) have not commenced within three years from the date of approval of the FEIS, a written reevaluation of the adequacy, accuracy and validity of the EIS shall be prepared by the responsible Federal official unless tiering of the EIS (as discussed in paragraph 7.g.) is being used. If there have been substantial changes in the proposed action that are relevant to environmental concerns, the affected environment, anticipated impacts, or proposed mitigation measures, a new or supplemental EIS shall be prepared and circulated according to Section 11, Supplemental Environmental Impact Statement.
- c. If major steps toward implementation of the proposed action have not occurred within five years from the date of approval of the FEIS, or within the time frame set forth in the FEIS, the responsible Federal official shall prepare a written re-evaluation of the adequacy, accuracy, and validity of the EIS.
- d. If the proposed action is to be implemented in phases or requires successive Federal approvals, a written reevaluation of the continued adequacy, accuracy and validity of the EIS shall be made prior to Federal approval of each major stage which occurs more than three years after approval of the FEIS, and a new or supplemental EIS prepared, if necessary.

23. OPERATING ADMINISTRATION IMPLEMENTING INSTRUCTIONS.

- a. Operating administrations shall issue instructions implementing this Order using one of the following options:
 - (1) An operating administration may issue detailed instructions or regulations which incorporate the points of this Order and the CEQ regulations and provide guidance on applying the environmental process to the administration's programs; or
 - (2) An operating administration may rely on this Order as its implementing procedures, provided it issues supplementary guidance which at a minimum applies the environmental process to the administration's programs, as described in the following paragraph.

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- b. Implementing instructions shall include the following information:
- (1) A list of actions which normally require preparation of an EIS.
 - (2) A list of actions which are not normally major Federal actions significantly affecting the environment and as such do not normally require an environmental assessment or an environmental impact statement (i.e., categorical exclusions). These actions may include, but are not limited to, funding or authorizing: maintenance and modernization of existing facilities; minor safety improvements; equipment purchases; operating expenses; and planning grants which do not imply a project commitment. Instructions should provide for preparation of EAs or EISs, as appropriate, for actions which would otherwise be classified as categorically excluded, but which are likely to, or will involve, significant impacts on, or from, as applicable, the circumstances outlined in paragraph 4.b. of this Order.
 - (3) Identification of the decisionmaking process, including timing for preparation of a draft and final environmental statement or a FONSI and designation of officials responsible for providing information on the administration's preparation, review and approval of environmental documents.
 - (4) A description of the public participation process or reference to other operating administration guidance on the public participation process. (See Section 17, Public Involvement Procedures.)
 - (5) A description of the processes to be used to insure early involvement of DOT, other agencies and the public in the environmental review of actions proposed by nonfederal applicants (CEQ 1501.2(d)).
 - (6) A description of the procedures for assuring implementation of mitigation measures identified in the EIS and the record of decision.
- c. Proposed implementing instructions and any substantial amendments thereto shall be submitted to P-1 for review and concurrence. Consultation with CEQ will be assisted by P-1. Proposed and final implementing instructions shall be published in the Federal Register.
24. EFFECTIVE DATE. This Order is effective immediately.
25. RESPONSIBLE OFFICIAL FOR OFFICE OF THE SECRETARY ACTIONS.

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For the actions originating within the Office of the Secretary, the official responsible for approval of environmental documents is the office director of the office originating the action. The Assistant Secretary for Transportation Policy is responsible for general oversight and advice on environmental matters in liaison with the Assistant General Counsel for Environmental, Civil Rights, and General Law.

FOR THE SECRETARY OF TRANSPORTATION:



Eugene A. Conti, Jr.
Assistant Secretary for
Transportation Policy

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Attachment

FORMAT AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS

1. Format.

- a. The format recommended in CEQ 1502-10 should be used for DOT EISs:

- (1) Cover Sheet
- (2) Summary
- (3) Table of Contents
- (4) Purpose and Need for the Action
- (5) Alternatives Including the Proposed Action
- (6) Affected Environment
- (7) Environmental Consequences
- (8) List of Preparers
- (9) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent
- (10) Index
- (11) Appendices (if any)

- b. The cover sheet for each environmental impact statement will include the information identified in CEQ 1502.11 and will be headed as follows:

U.S. Department of Transportation

(Operating Administration)

(Draft/Final) Environmental Impact Statement
Pursuant to Section 102(2)(C), P.L. 91-190

As appropriate, the heading will indicate that the EIS also covers the requirements of Section 4(f) of the DOT Act, Section 5301(e) and Section 5324(b) of the Federal Transit Law (49 USC), and/or Sections 16 and 18(a)(4) of the Airport Act.

2. Guidance as to Content of EISs.

- a. Environmental impact statements shall include the information specified in CEQ 1502.11 through 1502.18. The following paragraphs of this attachment are intended to be considered, where relevant, as guidance regarding the content of environmental statements.
- b. Additional information contained in research reports, guidance on methodology, and other materials relating to consideration of environmental factors should be employed as appropriate in the

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preparation of EISs and EAs. Also refer to the CEQ NEPA Net web pages at <http://ceq.eh.doe.gov/nepa/nepanet.htm>.

3. General Content. The following points are to be covered:

a. A description of the proposed Federal action, for example, "The proposed Federal action is approval of location of highway..." or "The proposed Federal action is approval of a grant application to construct...", and a statement of its purpose and need.

b. Alternatives, including the proposed action and the "no action" alternative, and including, where relevant, those alternatives not within the existing authority of the responsible preparing office. Section 102(2)(E) of NEPA requires the responsible agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources."

A rigorous exploration and an objective evaluation of the environmental impacts of all reasonable alternative actions, particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects, are essential. Sufficient analysis of such alternatives and their environmental benefits, costs, and risks should accompany the proposed action through the review process in order not to foreclose prematurely options which might enhance environmental quality or have less detrimental effects. Examples of such alternatives include: the alternative of not taking any action or of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts (e.g., low capital intensive improvements, mass transit alternatives to highway construction; alternatives related to different locations or designs or details of the proposed action which would present different environmental impacts). In each case, the analysis should be sufficiently detailed to reveal comparative evaluation of the environmental benefits, costs, and risks of each reasonable alternative, including the proposed action. Where an existing impact statement already contains such an analysis, its treatment of alternatives may be incorporated, provided such treatment is current and relevant to the precise purpose of the proposed action.

c. Affected environment.

(1) The EIS should succinctly describe the environment of the area affected as it exists prior to a proposed action, including other related Federal activities in the area, their interrelationships, and cumulative environmental impacts. The amount of detail provided in such descriptions should be commensurate with the extent and expected impact of the action, and with the amount of information required at the particular level of decisionmaking (e.g., planning, feasibility, design, etc.).

(2) The statement should identify, as appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its

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alternatives (see subparagraph 3e(2)). In discussing these population aspects, the statement should give consideration to using the rates of growth in the region of the project contained in the projections compiled for the Water Resources Council by the Bureau of Economic Analysis of the Department of Commerce and the Economic Research Service of the Department of Agriculture (the OBERS projection).

d. The relationship of the proposed action and how it may conform to or conflict with adopted or proposed land use plans, policies, controls, and goals and objectives as have been promulgated by affected communities. Where a conflict or inconsistency exists, the EIS should describe the extent of reconciliation and the reasons for proceeding notwithstanding the absence of full reconciliation.

e. The probable impact of the proposed action on the environment.

(1) This requires assessment of the positive and negative effects of the proposed action as it affects both national and international human environment. The attention given to different environmental factors will vary according to the nature, scale, and location of proposed actions. Primary attention should be given in the EIS to discussing those factors most evidently impacted by the proposed action.

(2) Secondary and other foreseeable effects, as well as primary consequences for the environment, should be included in the analysis. Secondary effects, such as impacts on existing community facilities and activities inducing new facilities and activities, may often be even more substantial than the primary effects of the original action itself. For example, the effects of the proposed action on population and growth may be among the more significant secondary effects. Such population and growth impacts should be estimated and an assessment made on their effects upon the resource base, including land use, water, and public services, of the area in question.

f. Any probable adverse environmental effects which cannot be avoided (such as water or air pollution, noise, undesirable land use patterns, or impacts on public parks and recreation areas, wildlife and waterfowl refuges, or on historic sites, damage to ecosystems, traffic congestion, threats to health, or other consequences adverse to the environmental goals set out in Section 101(b) of NEPA). This should be a brief summary of those effects discussed in paragraph 3.c that are adverse and unavoidable under the proposed action. Included for purposes of contrast should be a clear statement of how all adverse effects will be mitigated.

g. The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity. This discussion should cover the extent to which the proposed action involves, tradeoffs between short-term environmental gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action forecloses future options.

h. Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. This requires identification of unavoidable impacts and the

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extent to which the action irreversibly curtails the range of potential uses of the environment.

"Resources" means not only the labor and materials devoted to an action but also the natural and cultural resources lost or destroyed.

i. An indication of what other interests and considerations of Federal policy are thought to offset the adverse environmental effects of the proposed action identified pursuant to paragraphs 3.e and 3.f. The EIS should also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action (as identified in paragraph 3.b) that would avoid some or all of the adverse environmental effects. In this connection, cost-benefit analyses of proposed actions, if prepared or summaries thereof, should be attached to the EIS, and should clearly indicate the extent to which environmental costs have not been reflected in such analyses.

j. A discussion of problems and objections raised by other Federal agencies, Tribal, State and local entities, and the public in the review process, and the disposition of the issues involved and the reasons therefore. (This section may be added to the final EIS at the end of the review process.)

(1) The draft and final EISs should document issues raised through consultations with Federal, State, and local agencies with jurisdiction or special expertise and with the public, of actions taken in response to comments, public hearings, and other public involvement proceedings.

(2) Any unresolved environmental issues and efforts to resolve them, through further consultations or otherwise, should be identified in the final EIS. For instance, where an agency comments that the EIS has inadequate analysis or has reservations concerning the impacts, or believes that the impacts are too adverse for approval, either the issue should be resolved or the final EIS should reflect efforts to resolve the issue and set forth any action that will result.

(3) The EIS should reflect that every effort was made to discover and discuss all major points of view on the environmental effects of the proposed action and alternatives in the draft EIS. However, where opposing professional views and responsible opinion have been overlooked in the draft EIS and are raised through the commenting process, the environmental effects of the action should be reviewed in light of those views. A meaningful reference should be made in the final EIS to the existence of any responsible opposing view not adequately discussed in the draft EIS indicating responses to the issues raised.

(4) Substantive comments received on the draft (or summaries of responses from the public which have been exceptionally voluminous) should be attached to the final EIS, whether or not each comment is thought to merit individual discussion in the text of the EIS.

k. Draft EISs should indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement, including any cost benefit analyses prepared. In the case of documents not likely to be easily accessible (such as internal studies or reports), the EIS should indicate how such information may be obtained. If such information is attached

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to the statement, care should be taken to ensure that the EIS remains an essentially self-contained instrument, capable of being understood by the reader without the need for undue cross reference.

4. Publicly Owned Parklands, Recreational Areas, Wildlife and Waterfowl Refuges and Historic Sites (Section 4(f) of the DOT Act). The following points are to be covered:

a. Description of "any publicly owned land from a public park, recreational area or wildlife and waterfowl refuge" or "any land from an historic site" affected or taken by the project. This includes its size, available activities, use, patronage, unique or irreplaceable qualities, relationship to other similarly used lands in the vicinity of the project, maps, plans, slides, photographs, and drawings showing the project in sufficient scale and detail. This also includes its impact on park, recreation, wildlife, or historic areas, and changes in vehicular or pedestrian access.

b. Statement of the "National, State or local significance" of the entire park, recreation area, refuge, or historic site "as determined by the Federal, State or local officials having jurisdiction thereof."

(1) In the absence of such a statement, lands will be presumed to be significant. Any statement of "insignificance" by the official having jurisdiction is subject to review by the Department.

(2) Where Federal lands are administered for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the subject lands are in fact being used for park, recreation, wildlife, waterfowl, or historic purposes.

c. Similar data, as appropriate, for alternative designs and locations, including detailed cost estimates (with figures showing percentage differences in total project costs) and technical feasibility, and appropriate analysis of the alternatives, including any unique problems present and evidence that the cost or community disruptions resulting from alternative routes reach extraordinary magnitudes. This portion of the statement should demonstrate compliance with the Supreme Court's statement in the *Overton Park* case, as follows:

"The very existence of the statute indicates that the protection of parklands was to be given paramount importance. The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes. If the statutes are to have any meaning, the Secretary cannot approve the destruction of parkland unless he or she finds that the alternative routes present unique problems."

d. If there is no feasible and prudent alternative, description of all planning undertaken to minimize harm to the protected area and statement of actions taken or to be taken to implement this planning, including measures to maintain or enhance the natural beauty of the lands traversed.

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- (1) Measures to minimize harm may include replacement of land and facilities, or provision for functional replacement of the facility.
- (2) Design measures to minimize harm (e.g., tunneling, cut and cover, cut and fill, treatment of embankments, planting, screening, maintenance of pedestrian or bicycle paths and noise mitigation measures, all reflecting utilization of appropriate interdisciplinary design personnel).
- e. Evidence of concurrence or description of efforts to obtain concurrence of Federal, State or local officials having jurisdiction over the Section 4(f) property regarding the action proposed and the measures planned to minimize harm.
- f. If Federally owned properties are involved in highway projects the final EIS shall include the action taken or an indication of the expected action after filing a map of the proposed use of the land or other appropriate documentation with the Secretary of the Department supervising the land (23 USC 317).
- g. If land acquired with Federal grant money (e.g., Department of Housing and Urban Development open space) is involved, the final EIS shall include appropriate communications with the grantor agency.
- h. A specific statement that there is no feasible and prudent alternative and that the proposal includes all possible planning to minimize harm to the "Section 4(f) area" involved.
5. Properties and Sites of Historic and Cultural Significance. The EIS should document actions taken to preserve and enhance districts, sites, buildings, structures, and objects of historical, architectural, archaeological, or cultural significance affected by the action.
 - a. Draft EISs should include identification, through consulting the State Historic Preservation Officer (SHPO) and the National Register and applying the National Register Criteria (36 CFR Part 800), of properties that are included in or eligible for inclusion in the National Register of Historic Places that may be affected by the project. The Secretary of the Department of Interior will advise whether properties not listed are eligible for the National Register (36 CFR Part 63).
 - b. If application of the Advisory Council on Historic Preservation's (ACHP, or the Council) Criteria of Effect (36 CFR Part 800) indicates that the project will have an effect upon a property included in or eligible for inclusion in the National Register of Historic Places, the draft EIS should document the effect. Evaluation of the effect should be made in consultation with the SHPO or Tribal Historic Preservation Officer (THPO) and in accordance with the ACHP's Criteria of Adverse Effect (36 CFR Part 800).
 - c. Determinations of no adverse effect should be documented in the draft EIS with evidence of the application of the ACHP's Criteria of Adverse Effect and the views of the appropriate SHPO/THPO.

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If there is a disagreement on the finding of no adverse effect from the SHPO/THPO or any consulting parties that cannot be resolved, or the Council specifically requests review, then the finding must be submitted to the Council for review (36 CFR Part 800.5 (b) and (c)).

d. If the project will have an adverse effect upon a property included in or eligible for inclusion in the National Register of Historic Places, the final EIS should include either an executed Memorandum of Agreement or Programmatic Agreement, or comments from the Council after consideration of the project at a meeting of the ACHP and an account of actions to be taken in response to the comments of the ACHP. Procedures for obtaining a Memorandum of Agreement or Programmatic Agreement and the comments of the Council are found in 36.CFR Part 800.

e. To determine whether the project will have an effect on properties of State or local historical, architectural, archaeological, or cultural significance not included in or eligible for inclusion in the National Register, the responsible official should consult with the SHPO/THPO, with the local official having jurisdiction of the property, and, where appropriate, with historical societies, museums, or academic institutions having expertise with regard to the property. Use of land from historic properties of Federal, Tribal, State and local significance as determined by the official having jurisdiction thereof involves Section 4(f) of the DOT Act, and documentation should include information necessary to consider a Section 4(f) determination.

6. Impacts of the Proposed Action on the Human Environment Involving Community Disruption and Relocation.

a. The EIS should include a description of probable impact sufficient to enable an understanding of the extent of the environmental and social impact of the project alternatives and to consider whether relocation problems can be properly handled. This would include the following information obtainable by visual inspection of the proposed affected area and from secondary sources and community sources when available.

(1) An estimate of the households to be displaced including the family characteristics (e.g., low income populations or minority populations, tenure, the elderly, large families).

(2) Impact on the human environment of an action which divides or disrupts an established community, including, where pertinent, the effect of displacement on types of families and individuals affected, effect of streets cut off, separation of residences from community facilities, separation of residential areas.

(3) Impact on the neighborhood and housing to which relocation is likely to take place (e.g. lack of sufficient housing for large families, doublings up).

(4) An estimate of the businesses to be displaced, and the general effect of business dislocation on the economy of the community.

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(5) A discussion of relocation housing in the area and the ability to provide adequate relocation housing for the types of families to be displaced. If the resources are insufficient to meet the estimated displacement needs, a description of the actions proposed to remedy this situation including, if necessary, use of housing of last resort.

(6) Results of consultation with local officials and community groups regarding the impacts to the community affected. Relocation agencies and staff and other social agencies can help to describe probable social impacts of this proposed action.

(7) Where necessary, special relocation advisory services to be provided the elderly, handicapped and illiterate regarding interpretations of benefits, assistance in selecting replacement housing, and consultation with respect to acquiring, leasing, and occupying replacement housing.

b. This data should provide the preliminary basis for assurance of the availability of relocation housing as required by 49 CFR 24.204.

7. Considerations Relating to Pedestrians and Bicyclists. Where appropriate, the EIS should discuss impacts on and consideration to be given in the development of the- project to pedestrian and bicycle access, movement and safety within the affected area, particularly in medium and high density commercial and residential areas.

8. Other Social Impacts. The general social groups specially benefited or harmed by the proposed action should be identified in the EIS, including the following:

a. Particular effects of a proposal on the elderly, handicapped, non-drivers, transit dependent, low income populations or minority populations should be described to the extent reasonably predictable through evaluation of U.S. Census data. See DOT Order 5610.2.

b. How the proposal will facilitate or inhibit their access to jobs, educational facilities, religious institutions, health and welfare services, recreational facilities, social and cultural facilities, pedestrian movement facilities, and public transit services.

9. Noise, Air, and Water Pollution Standards. The EIS shall reflect sufficient analysis of the effects of the proposed action on attainment and maintenance of any environmental standards established by law or administrative determination (e.g. noise, ambient air quality, water quality), including the following documentation:

a. With respect to water quality, there should be consultation with the agency responsible for the State water pollution control program as to conformity with standards and regulations regarding storm sewer discharge, sedimentation control, and other non-point source discharges.

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b. The comments or determinations of the offices charged with administration of the State's implementation plan for air quality as to the consistency of the project with State plans for the implementation of ambient air quality standards.

c. Conformity to adopted noise standards, compatible, if appropriate, with different land uses.

10. Construction Impacts. In general, adverse impacts during construction will be of no less importance than long-term impacts of a proposal. Nonetheless, EISs should appropriately address such matters as the following, identifying any special problem areas:

a. Noise impacts from construction and any specifications setting maximum noise levels.

b. Disposal of spoil and effect on borrow areas and disposal sites (include specifications where special problems are involved).

c. Measures to minimize effects on traffic and pedestrians.

11. Land Use and Urban Growth. The EIS should include, to the extent relevant and predictable:

a. The effect of the project on land use, development patterns, and urban growth.

b. Where significant land use and development impacts are anticipated, identify public facilities needed to serve the new development and any problems or issues which would arise in connection with these facilities, and the comments of agencies that would provide these facilities.